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OF

PRINCIPAL MATTERS.

ACTION.

1. A suit on a recognizance of bail is an original proceeding. A scire facias upon a judgment, is to some purposes only a continuation of the former suit. But an action of debt on a judgment is an original suit. *Davis* v. *Packard.* 276.
2. An action of debt on a recognizance of bail may be brought in a different court from that in which the original proceedings were commenced. *Ibid.*
3. Action of covenant brought by the plaintiff in error to recover the amount of certain rents alleged to have been due and in arrear from the defendant since the death of his intestate under an indenture, by which a certain annual rent was reserved out of the property conveyed by the indenture, and which the grantee covenanted to pay a clause of re-entry for non-payment of the rent being contained in the deed. By the court: it is firmly established, that on a covenant to pay rent, reserved by the deed granting real estate subject to the rent, the personal representatives of the covenantor are liable for the non-payment of the rent, after an assignment, although there may also be a good remedy against the assignee. The laws of Virginia have not, in this respect, narrowed down the responsibility existing by the common law in England. *Scott* v. *Lunt's Administrator.* 596.
4. The assignee of a fee farm rent, being an estate of inheritance, is, upon the principles of the common law, entitled to sue therefor in his own name. It is an exception from the general rule, that choses in action cannot be transferred, and stands upon the ground of

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being, not a mere personal debt, but a perdurable inheritance. *Ibid.*

5. Action on a bond executed by William Carson, as paymaster, and signed by A. L. Duncan and John Carson as his sureties, conditioned that William Carson, paymaster for the United States, should perform the duties of that office within the district of Orleans. The breach alleged was that W C. had received large sums of money in his official capacity, in his life time, which he had refused to pay into the treasury of the United States. The bond was drawn in the names of Abner L. Duncan, John Carson and Thomas Duncan as sureties for William Carson, but was not executed by Thomas Duncan. There were no witnesses to the bond, but it was acknowledged by all the parties to it before a notary public. The defendants, the heirs and representatives of A. L. Duncan, in answer to a petition to compel the payment of the bond, say that it was stipulated and understood, when the bond was executed, that one Thomas Duncan should sign it, which was never done, and the bond was never completed; and therefore A. L. Duncan was never bound by it: they also say, that, as the representatives of A. L. Duncan, they are not liable for the alleged defalcation of William Carson, because he acted as paymaster out of the limits of the district of Louisiana; and the deficiencies, if any, occurred without the limits of the said district. Before the jury were sworn the defendants offered a statement to the court for the purpose of obtaining a special verdict on the facts, according to the provisions of the act of the legislature of Louisiana of 1818. The court would not suffer the same to be given to the jury for a special finding, because it "was contrary to the practice of the court to compel a jury to find a special verdict." The judge charged the jury that the bond sued upon was not to be governed by the laws of Louisiana in force when the bond was signed at New Orleans, but that this and all similar bonds must be considered as having been executed at the seat of the government of the United States, and to be governed by the principles of the common law; that although the copy of the bond sued on, which was certified from the treasury department, exhibited a scrawl instead of a seal, yet they had a right to presume that the original bond had been executed according to law; and that in the absence of all proof as to the limits of the district of New Orleans, the jury was bound to presume that the defalcation occurred within the district; and if the paymaster acted beyond the limits of the district, it was incumbent on the defendants to prove the fact: held, that there was no error in these decisions of the district court of Louisiana. This is an official bond, and was given in pursuance of a law of the United States. By this law, the conditions of the bond were fixed; and also the manner in which its obligations should be enforced. It was delivered to the treasury department at Washington; and to the treasury, did the paymaster and his

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sureties become bound to pay any moneys in his hands. These powers exercised by the federal government cannot be questioned. It has the power of prescribing under its own laws, what kind of security shall be given by its agents for a faithful discharge of their public duties. And in such cases the local law cannot affect the contract, as it is made with the government; and, in contemplation of law, at the place where its principal powers are exercised. *Duncan's Heirs* v. *The United States.* 435.

ADMIRALTY.

1. A libel was filed in the district court of the United States for the eastern district of Louisiana, against the steamboat Planter, by H. and V., citizens of New Orleans, for the recovery of a sum of money alleged to be due to them, as shipwrights, for work done and materials found in the repairs of the Planter. The libel asserts that, by the admiralty law and the laws of the state of Louisiana, they have a lien and privilege upon the boat, her tackle, &c. for the payment of the sums due for the repairs and materials, and prays admiralty process against the boat, &c. The answer of the owners of the Planter avers that they are citizens of Louisiana, residing in New Orleans; that the libellants are also citizens, and that the court have no jurisdiction of the cause. Held, that this was a case of admiralty jurisdiction. *Peyroux et al.* v. *Howard et al.* 324.
2. By the civil code of Louisiana, workmen employed in the construction or repairs of ships or boats enjoy the privilege of a lien on such ships or boats, without being bound to reduce their contracts to writing, whatever may be their amount; but this privilege ceases if they have allowed the ship or boat to depart without exercising their rights. The state law, therefore, gives a lien in this case. *Ibid.*
3. In the case of the General Smith, 4 Wheat. 438, S. C. 4 Peters's Condensed Reports, it is decided that the jurisdiction of the admiralty in cases where the repairs are upon a domestic vessel, depends upon the local law of the state. Where the repairs have been made or necessaries furnished to a foreign ship, or to a ship in the ports of a state to which she does not belong, the general maritime law gives a lien on ships as security and the party may maintain a suit in the admiralty to enforce his right. But, as to repairs or necessaries in the port or state to which the ships belong, the case is governed altogether by the local law of the state; as no lien is implied unless it is recognized by that law. But if the local law gives the lien, it may be enforced in the admiralty. *Ibid.*
4. The services in this case were performed in the port of New Orleans, and whether this was within the jurisdiction of the admiralty or not, depends on the fact whether the tide in the Mississippi ebbs and flows as high up the river as the port of New Orleans. The court considered themselves authorized judicially to notice the

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situation of New Orleans, for the purpose of determining whether the tide ebbs and flows as high up the river as that place; and being satisfied that although the current of the Mississippi at New Orleans may be so strong as not to be turned backwards by the tide, yet the effect of the tide upon the current is so great as to occasion a regular rise and fall of the water; New Orleans may be properly said to be within the ebb and flow of the tide, and the jurisdiction of the admiralty prevails there. *Ibid.*

5. In order to the decision whether the admiralty jurisdiction attaches to such services as those performed by the libellants, the material consideration is, whether the service was essentially a maritime service, and to be performed substantially on the sea or tide water. It is no objection to the jurisdiction of the admiralty in the case, that the steamboat Planter was to be employed in navigating waters beyond the ebb and flow of the tide. In the case of the steamboat Jefferson, it was said by this court that there is no doubt the jurisdiction exists, although the commencement or termination of the voyage may happen to be at some place beyond the reach of the tide. *Ibid.*

6. Some of the older authorities seem to give countenance to the doctrine that an express contract operates as a waiver of the lien: but it is settled at the present day, that an express contract for a stipulated sum is not of itself a waiver of a lien but that, to produce that effect, the contract must contain some stipulations inconsistent with the continuance of such lien, or from which a waiver may fairly be inferred. *Ibid.*

7. Jurisdiction.

ALIENS.

An alien does not lose his right to sue in the courts of the United States by a residence in a state of the union. *Breedlove et al.* v. *Nicolet et al.* 413.

APPEAL.

1. R. being indebted to the Farmers Bank of Alexandria, on certain promissory notes exceeding in amount one thousand dollars, conveyed to H. a lot of ground in Alexandria, exceeding one thousand dollars in value, devised to her by her husband, to secure the payment of the said notes by sale of the lot. R. claimed an estate in fee in the property conveyed to the trustee. The sum due to the bank was reduced by payments to less than one thousand dollars, and R. being deceased, a bill was filed by the bank to compel the trustee to sell the property conveyed to him by R. for the payment of the balance of the debt. The circuit court decreed that R. held no other interest in the property than a life estate, and dismissed the bill. The complainants appealed. On a motion to dismiss the appeal for want of jurisdiction, the debt remaining due to the bank being less than one thousand dollars, the amount re-

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quired to give jurisdiction in appeals and writs of error from the circuit court of the district of Columbia; it was held that the real matter in controversy was the debt claimed in the bill; and though the title of the lot might be inquired into incidentally, it does not constitute the object of the suit. The appeal was dismissed. *Farmers Bank of Alexandria* v. *Hooff et al.* 168.

2. No evidence can be looked into in this court, which exercises an appellate jurisdiction, that was not before the circuit court; and the evidence certified with the record must be considered here as the only evidence before the court below If, in certifying a record, a part of the evidence in the case had been omitted, it might be certified in obedience to a certiorari; but, in such a case, it must appear from the record that the evidence was used or offered to the circuit court. *Holmes et al.* v. *Trout et al.* 171.

3. A decree was pronounced by the district court of the United States for the district of Alexandria, in December 1829, from which the defendants appealed, but did not bring up the record. At January term 1832, the appellees, in pursuance of the rule of court, brought up the record and filed it; and on motion of their counsel, the appeal was dismissed. On the 9th of March 1832, a citation was signed by the chief justice of the court for the district of Columbia, citing the plaintiffs in the original action to appear before the supreme court, *then in session*, and show cause why the decree of the circuit court should not be corrected. A copy of the record was returned with the citation, "executed," and filed with the clerk. By the court. The record is brought up irregularly, and the cause must be dismissed. *Yeaton et al.* v. *Lenox et al.* 220

4. The act of March 1803, which gives the appeal from decrees in chancery, subjects it to the rules and regulations which govern writs of error. Under this act it has been always held that an appeal may be prayed in court when the decree is pronounced. But if the appeal be prayed after the court has risen, the party must proceed in the same manner as had been previously directed in writs of error. *Ibid.*

5. The judicial act directs that a writ of error must be allowed by a judge, and that a citation shall be returned with the record; the adverse party to have at least twenty days notice. This notice, the court understands, is twenty days before the return day of the writ. *Ibid.*

6. Matter assigned in the appellate court as error in fact, never appears upon the record of the inferior court; if it did, it would be error in law. The whole doctrine of allowing in the appellate court the assignment of error in fact, grows out of the circumstance that such matter does not appear on the record of the inferior court. *Davis* v. *Packard et al.* 276.

7 Appeal dismissed because all the parties to the decree in the circuit court had not joined in the appeal to this court. *Owings* v. *Kincannon.* 399.

APPEAL.

8. The claimants of eighty-four boxes of sugar, seized in the port of New Orleans, for an alleged breach of the revenue laws, and condemned as forfeited to the United States for having been entered as brown instead of white sugar, claimed an appeal from the district court of the United States to the supreme court. The sugars, while under seizure, were appraised at two thousand six hundred and two dollars and fifty-one cents, and after condemnation they were sold for two thousand three hundred and thirty-eight dollars and forty-eight cents; leaving, after deducting the expenses and costs of sale, the sum of two thousand one hundred and fifty dollars and six cents. The duties on the sugars, considering them as white or brown, being deducted from the amount, reduced the net proceeds below two thousand dollars, the amount upon which an appeal could be taken. Held, that the value in controversy was the value of the property at the time of the seizure, exclusive of the duties, and that the claimant had a right to appeal to this court. *The United States* v. *Eighty-four Boxes of Sugar.* 453.
9. A mandamus was issued by the superior court of appeals of the eastern middle district of Florida, directed to the register and receiver of the western land district of Florida, commanding them to permit the entry and purchase of certain lands. From this proceeding, the register and receiver appealed to this court. The appeal was dismissed; the proceeding at mandamus being at common law, and therefore the removal to this court should have been by writ of error. *Ward et al.* v. *Gregory.* 633.

ARKANSAS TERRITORY.

Construction of statutes of the United States.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

1. It is not necessary to the validity of a deed of assignment for the benefit of creditors, that creditors should be consulted; though the propriety of pursuing such a course will generally suggest it, when they can be conveniently assembled. But be this as it may, it cannot be necessary that the fact should appear on the face of the deed. *Brashear* v. *West.* 608.
2. That a general assignment of all a man's property is *per se* fraudulent, has never been alleged in this country. The right to make it results from the absolute ownership which every man claims over that which is his own. *Ibid.*
3. An assignment was made by Francis West, to certain trustees of all his property giving a preference to particular creditors; who were to be paid their claims in full, before any portion of the property assigned was to be divided among his other creditors. By the court: the preference given in this deed to favoured creditors, though liable to abuse, and perhaps to serious objections, is the exercise of a power resulting from the ownership of property

which the law has not yet restrained. It cannot be treated as a fraud. *Ibid.*

4. The assignment excluded from the benefit of its provisions, all creditors who should not within ninety days, execute a release of all claims and demands on the assignor of any nature or kind whatsoever. By the court. This stipulation cannot operate to the exemption of any portion of a debtor's property, from the payment of his debts. If a surplus should remain after their extinguishment, that would be rightfully his. Should the fund not be adequate, no part of it is relinquished. The creditor releases his claim only to the future labours of his debtor. If this release were voluntary, it would be unexceptionable. But it is induced by the necessity arising from the certainty of being postponed to all those creditors who shall accept the terms, by giving the release. It is not therefore voluntary. Humanity and policy both plead so strongly in favour of leaving the product of his future labours to the debtor, who has surrendered all his property, that in every commercial country known to the court, except our own, the principle is established by law This certainly furnishes a very imposing argument against its being denied. The objection is certainly powerful, that it tends to delay creditors. If there be a surplus, the surplus is placed in some degree out of the reach of those who do not sign the release, and thereby entitle themselves under the deed. But the property is not entirely locked up. A court of equity, exercising chancery jurisdiction, will compel the execution of the trust, and decree what may remain to those creditors who have not acceded to the deed. Yet the court are far from being satisfied, that upon general principle, such a deed ought to be sustained. *Ibid.*

5. Whatever may be the intrinsic weight of objections to such assignments, they seem not to have prevailed in Pennsylvania. The construction which the courts of that state have put on the Pennsylvania statute of frauds, must be received in the courts of the United States. *Ibid.*

6. The assignment transferred to the assignees a debt due to the assignor by the complainant. The complainant filed a bill against the assignees, claiming to set off against the debt assigned to them, the amount of a judgment obtained by him against the assignor, after the assignment. By the court: if subsequent to the assignment being made, and before notice of it, any counter claims be acquired by a debtor to the assignor, these claims may, unquestionably, be sustained. But if they be acquire after notice, equity will not sustain them. If it were even true, that they might have been offered in evidence in a suit at law brought in the name of the assignor, he who neglected to avail himself of that advantage, cannot, after judgment, avail himself of such discount as plaintiff in equity. *Ibid.*

BILL OF EXCEPTIONS.

The whole charge of the circuit court was brought up with the record. By the court. This is a practice which this court have uniformly discountenanced, and which the court trusts a rule made at last term will effectually suppress. *Magniac* v *Thompson.* 348.

CASES CITED AND AFFIRMED.

1. The cases of Russell v. Clarke's Executors, 7 Cranch's Rep. 69, 2 Peters's Condensed Reports, 417; and Drummond v. Prestman, 12 Wheat. Rep. 515, cited. *Douglass* v. *Reynolds.* 113.
2. In the case of Polk's Lessee v. Wendell, 9 Wheat. 308, it is said by this court, that, on general principles, it is incontestable that a grantee can convey no more than he possesses. Hence, those who come in under a void grant, can acquire nothing. *Sampeyreac* v. *The United States.* 222.
3. The cases of Nollan et al. v. Torrance, 9 Wheat. Rep. 537; Connolly et al. v. Taylor, 2 Peters, 556; and Cameron v. M'Roberts, 3 Wheat. Rep. 591, cited and affirmed. *Vattier* v. *Hinde.* 252.
4. The case of Carver v. Jackson, 4 Peters, 80, 81, cited. *Magniac* v. *Thompson.* 348.
5. The court are entirely satisfied with their former decision in the case of the Union Bank of Georgetown v. Magruder, 3 Peters's Rep. 87. *The Union Bank of Georgetown* v. *Magruder.* 287.

CHANCERY AND CHANCERY PRACTICE.

1. Practice.
2. Evidence.
3. A bill was filed in the circuit court of Ohio, claiming a conveyance of certain real estate in Cincinnati from the defendants, and after a decree in favour of the complainants, and an appeal to the supreme court, the decree of the circuit court was reversed, because a certain Abraham Garrison, through whom one of the defendants claimed to have derived title, had not been made a party to the proceedings, and who was, at the time of the institution of the same, a citizen of the state of Illinois, although the fact of such citizenship did not then appear on the record. Afterwards, a supplemental bill was filed in the circuit court, and Abraham Garrison appeared and answered, and disclaimed all interest in the case: whereupon the circuit court, with the consent of the complainants, dismissed the bill as to him. By the court. If the defendants have distinct interests, so that substantial justice can be done by decreeing for or against one or more of them, over whom the court has jurisdiction, without affecting the interests of others, its jurisdiction may be exercised as to them. If, when the cause came on for hearing, Abraham Garrison had still been a defendant, a decree might then have been pronounced for or against the other defendants, and the bill have been dismissed as to him, if such decree could have been pronounced as to them without af-

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fecting his interests. No principle of law is perceived which opposes this course. The incapacity of the court to exercise jurisdiction over Abraham Garrison, could not affect their jurisdiction over other defendants, whose interests were not connected with his, and from whom he was separated, by dismissing the bill as to him. *Vattier* v. *Hinde*. 252.

4. The rules of law respecting a purchaser without notice, are formed for the protection of him who purchases a legal estate, and pays the purchase money without a knowledge of the outstanding equity. They do not protect a person who acquires no semblance of title. They apply fully, only to the purchaser of the legal estate. Ever the purchaser of an equity is bound to take notice of any prior equity. *Ibid.*

5. The bill set forth a title in B. H., the wife of T. H., by direct descent from her brother to herself, and insisted on this title to certain real estate. The answer of the defendants resisted the claim, because the land had been conveyed by the complainants before the institution of the suit to A. C. The complainant in his replication admitted the execution of the deed to A. C., but averred that it was made in trust to reconvey the lot to T. H., to be held by him for the use and benefit of B. H., his wife, and her heirs, and to enable T. H. to manage and litigate the said rights; and that A. H., in execution of the trust, made a deed to T. H. The deed was recorded, and was exhibited, but it did not state the trust. The rules of the court of chancery will not permit this departure in the replication from the statements of the bill. *Ibid.*

6. Where the new parties to a proceeding in chancery are the legal representatives of an original party, and the proceedings have been revived in their names, by the order of the court on a bill of revivor; the settled practice is to use all the testimony which might have been used if no abatement had occurred. The representatives take the place of those which they represent, and the suit proceeds in a new form, unaffected by the change of name. *Ibid.*

7 To deprive a party of the fruits of a judgment at law, it must be against conscience that he should enjoy them. The party complaining, must show that he has more equity than the party in whose favour the law has decided. *Brashear* v. *West*. 608.

8. A complex and intricate account is an unfit subject for examination in a court, and ought always to be referred to a commissioner, to be examined by him and reported, in order to a final decree. To such report the parties may take any exceptions, and thus bring any question they may think proper before the court. *Dubourg de St Colombe's Heirs* v. *The United States*. 625.

CONSTITUTIONAL LAW

1. The provision in the fifth amendment to the constitution of the United States, declaring that private property shall not be taken

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for public use without just compensation, is intended solely as a limitation on the exercise of power by the government of the United States; and is not applicable to the legislation of the states. *Barron* v. *The Mayor and City Council of Baltimore.* 243.

2. The constitution was ordained and established by the people of the United States for themselves; for their own government; and not for the government of individual states. Each state established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation, and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally and necessarily applicable to the government created by the instrument. They are limitations of power granted in the instrument itself; not of distinct governments framed by different persons and for different purposes. *Ibid.*

3. The record of the proceedings in this case, brought up with the writ of error to the court for the correction of errors of the state of New York, showed that the suit was commenced in the supreme court of the state of New York, and that the plaintiff in error, who was consul-general of the king of Saxony, did not plead or set up his exemption from such suit in the supreme court; but, on the cause being carried up to the court for the correction of errors, this matter was assigned for error in fact; notwithstanding which, the court of errors gave judgment against the plaintiff in error. The court of errors of New York having decided that the character of consul did not exempt the plaintiff in error from being sued in the state court, the judgment of the court of errors was reversed. *Davis* v. *Packard.* 276.

4. As an abstract question, it is difficult to understand on what ground a state court can claim jurisdiction of civil suits against foreign consuls. By the constitution, the judicial power of the United States extends to all cases affecting ambassadors, other public ministers and consuls; and the judiciary act of 1789 gives to the district courts of the United States, *exclusively of the courts of the several states,* jurisdiction of all suits against consuls and vice-consuls, except for certain offences enumerated in the act. *Ibid.*

5. If a consul, being sued in a state court, omits to plead his privilege of exemption from the suit, and afterwards, on removing the judgment of the inferior court to a higher court by writ of error, claims the privilege, such an omission is not a waiver of the privilege. If this was to be viewed merely as a personal privilege, there might be grounds for such a conclusion, but it cannot be so considered; it is the privilege of the country or government which the consul represents. This is the light in which foreign minis-

ters are considered by the law of nations; and our constitution and law seem to put consuls on the same footing in this respect. *Ibid.*

6. If this privilege or exemption was merely personal, it can hardly be supposed that it would have been thought sufficiently important to require a special provision in the constitution and laws of the United States. Higher considerations of public policy, doubtless, led to the provision. It was deemed fit and proper, that the courts of the government, with which rested the regulation of foreign intercourse, should have cognizance of suits against the representatives of such foreign governments. *Ibid.*

7 The action in the supreme court of New York against the defendant, was on a recognizance of bail, and it was contended that this was not an original proceeding, but the continuance of a suit rightfully brought against one who was answerable to the jurisdiction of the court in which it was instituted, and in which the plaintiff in error became special bail for the defendant; and therefore the act of congress did not apply to the case. Held, that the act of congress being general in its terms, extending to all suits against consuls, it applied to this suit. *Ibid.*

8. It has been repeatedly ruled in this court, that the court can look only to the record to ascertain what was decided in the court below. *Ibid.*

9. Matter assigned in the appellate court as error in fact, never appears upon the record of the inferior court; if it did, it would be error in law. The whole doctrine of allowing in the appellate court the assignment of error in fact, grows out of the circumstance that such matter does not appear on the record of the inferior court. *Ibid.*

10. The titles to lands under the acts of the legislature of the state of Pennsylvania, providing for the sale of the landed estate of John Nicholson, in satisfaction of the liens the state held on those lands, and the proceedings under the same are valid. *Lessee of Livingston* v. *Moore.* 469.

11. These acts, and the proceedings under them, do not contravene the provisions of the constitution of the United States, in any manner whatsoever. *Ibid.*

12. The words used in the constitution of Pennsylvania in declaring the extent of the powers of its legislature, are sufficiently comprehensive to embrace the powers exercised over the estate of John Nicholson. *Ibid.*

13. Juan Madrazzo, a subject of the king of Spain, filed a libel praying *admiralty* process against the state of Georgia, alleging that the state was in possession of a certain sum of money, the proceeds of the sale of certain slaves which had been seized as illegally brought into the state of Georgia; and which seizure had been subsequently, under admiralty proceedings, adjudged to have been illegal, and the right of Madrazzo to the slaves, and the money arising from the sale thereof, established by the decision of the circuit court of

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the United States for the district of Georgia. The counsel for the petitioner claimed that the supreme court had jurisdiction of the case, alleging that the eleventh amendment of the constitution of the United States, which declares that the judicial power of the United States shall not extend to any suits in *law* or *equity*, did not take away the jurisdiction of the courts of the United States, in suits in *the admiralty* against a state. Held, that this is not a case where property is in custody of a court of admiralty; or brought within its jurisdiction, and in the possession of any private person. It is a mere personal suit against a state to recover proceeds in its possession, and such a suit cannot be commenced in this court against a state. *Ex parte Juan Madrazzo.* 627.

CONSTRUCTION OF STATUTES OF THE UNITED STATES.

1. Forgery.
2. Robbing the mail.
3. Construction of the act of congress passed the 5th of May 1830, entitled "an act for the further extending the powers of the judges of the superior court of the territory of Arkansas, under the act of the 26th May 1824, and for other purposes." *Sampeyreac* v. *The United States.* 222.
4. Under the provisions of an act of congress passed on the 26th May 1824, proceedings were instituted in the superior court of the territory of Arkansas, by which a confirmation was claimed of a grant of land alleged to have been made to the petitioner, Sampeyreac, by the Spanish government, prior to the cession of Louisiana to the United States by the treaty of April 3d, 1803. This claim was opposed by the district attorney of the United States; and the court, after hearing evidence, decreed that the petitioner recover the land from the United States. Afterwards, the district attorney of the United States, proceeding on the authority of the act of 8th May 1830, filed a bill of review founded on the allegation that the original decree was obtained by fraud and surprise, that the documents produced in support of the claim of Sampeyreac were forged, and that the witnesses who had been examined to sustain the same were perjured. At a subsequent term Stewart was allowed to become a defendant to the bill of review, and filed an answer, in which the fraud and forgery are denied, and in which he asserts that if the same were committed, he is ignorant thereof, and asserts that he is a bona fide purchaser of the land for a valuable consideration, from one John J. Bowie, who conveyed to him the claim of Sampeyreac by deed, dated about the 22d October 1828. On a final hearing, the court being satisfied of the forgery, perjury and fraud, reversed the original decree. Held, that these proceedings were legal, and were authorized by the act of the 5th of May 1830. *Ibid.*
5. Almost every law providing a new remedy, affects and operates

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upon causes of action existing at the time the law is passed. The law of 1830 is in no respect the exercise of judicial powers; it only organizes a tribunal with the powers to entertain judicial proceedings. The act, in terms, applies to bills filed, or to be filed. Such retrospective effect is no unusual course in laws providing new remedies. *Ibid.*

6. The act of 1830 does not require that all the technical rules in the ordinary course of chancery proceedings on a bill of review shall be pursued in proceedings instituted under the law. *Ibid.*
7. Construction of the acts of congress relative to drawback on refined sugar. *Barlow* v. *The United States.* 404.
8. The legislature did not in the enactments in reference to drawback intend to supersede the common principle of the criminal as well as the civil jurisprudence of the country, that ignorance of the law will not exempt its violation. *Ibid.*
9. The act of the 27th of March 1804, by which the president of the United States was authorized to attach to the navy yard at Washington a captain of the navy for the performance of certain duties, was correctly construed by the head of the navy department until 1829, allowing to the defendant commissions on the sums paid by him, as the special agent of the navy department in making the disbursements. *United States* v. *Macdaniel.* 1.
10. A seizure of sugars was made under an allegation that they were of a different quality from that mentioned in the entry. By the court. The statute under which these sugars were seized and condemned, is a highly penal law, and should, in conformity with the rule on the subject, be construed strictly. If either through accident or mistake the sugars were entered by a different denomination from what their quality required, a forfeiture is not incurred. *United States* v. *Eighty-four Boxes of Sugar.* 453.
11. Heads of the public departments of the government.
12. Public accounts.
13. Set-off.

CONSTRUCTION OF STATE LAWS.

1. Construction of the insolvent laws of Louisiana. *Breedlove et al.* v. *Nicolet et al.* 413.
2. The titles to lands under the acts of the legislature of the state of Pennsylvania, providing for the sale of the landed estate of John Nicholson, in satisfaction of the liens the state held on those lands, and the proceedings under the same, are valid. *Lessee of Livingston* v. *Moore.* 469.
3. These acts, and the proceedings under them, do not contravene the provisions of the constitution of the United States, in any manner whatsoever. *Ibid.*
4. The words used in the constitution of Pennsylvania in declaring the extent of the powers of its legislature, are sufficiently comprehen-

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sive to embrace the powers exercised over the estate of John Nicholson. *Ibid.*

5. The common law of England, and all the statutes of parliament made in aid of the common law, prior to the fourth year of the reign of king James the first, which are of a general nature, and not local to the kingdom, were expressly adopted by the Virginia statute of 1776; and the subsequent revisions of its code have confirmed the general doctrine on this particular subject. *Scott* v. *Lunt's Administrator.* 596.

CONSULS.

1. The record of the proceedings in this case, brought up with the writ of error to the court for the correction of errors of the state of New York, showed that the suit was commenced in the supreme court of the state of New York, and that the plaintiff in error, who was consul-general of the king of Saxony, did not plead or set up his exemption from such suit in the supreme court, but, on the cause being carried up to the court for the correction of errors, this matter was assigned for error in fact; notwithstanding which, the court of errors gave judgment against the plaintiff in error. The court of errors of New York having decided that the character of consul did not exempt the plaintiff in error from being sued in the state court, the judgment of the court of errors was reversed. *Davis* v. *Packard.* 276.
2. As an abstract question, it is difficult to understand on what ground a state court can claim jurisdiction of civil suits against foreign consuls. By the constitution, the judicial power of the United States extends to all cases affecting ambassadors, other public ministers and consuls; and the judiciary act of 1789 gives to the district courts of the United States, *exclusively of the courts of the several states,* jurisdiction of all suits against consuls and vice-consuls, except for certain offences enumerated in the act. *Ibid.*
3. If a consul, being sued in a state court, omits to plead his privilege of exemption from the suit, and afterwards, on removing the judgment of the inferior court to a higher court by writ of error, claims the privilege, such an omission is not a waiver of the privilege. If this was to be viewed merely as a personal privilege, there might be grounds for such a conclusion, but it cannot be so considered; it is the privilege of the country or government which the consul represents. This is the light in which foreign ministers are considered by the law of nations; and our constitution and law seem to put consuls on the same footing in this respect. *Ibid.*
4. If this privilege or exemption was merely personal, it can hardly be supposed that it would have been thought sufficiently important to require a special provision in the constitution and laws of the United States. Higher considerations of public policy, doubtless, led to the provision. It was deemed fit and proper, that the courts of the government, with which rested the regulation of foreign

CONSULS.
intercourse, should have cognizance of suits against the representatives of such foreign governments. *Ibid.*
5. The action in the supreme court of New York against the defendant, was on a recognizance of bail, and it was contended that this was not an original proceeding, but the continuance of a suit rightfully brought against one who was answerable to the jurisdiction of the court in which it was instituted, and in which the plaintiff in error became special bail for the defendant, and therefore the act of congress did not apply to the case. Held, that the act of congress being general in its terms, extending to all suits against consuls, it applied to this suit. *Ibid.*

COURTS OF THE UNITED STATES.
The question before the court was, whether the charge to the jury in the circuit court contains any erroneous statement of the law. By the court. In examining it for the purpose of ascertaining its correctness, the whole scope and bearing of it must be taken together. It is wholly inadmissible to take up single and detached passages, and to decide upon them without attending to the context, or without incorporating such qualifications and explanations as naturally flow from the language of other parts of the charge. The whole is to be construed as it must have been understood, both by the court and the jury, at the time it was delivered. *Magniac* v. *Thompson*, 348.

CRIMES.
1. Forgery.
2. Robbing the mail of the United States.

DECISIONS OF STATE COURTS.
The rule of law being once established by the highest tribunal of a state, courts which propose to administer the law as they find it, are ordinarily bound, in limine, to presume that, whether it appears from the reports or not, all the reasons which might have been urged, pro or con, upon the point under consideration, had been examined and disposed of judicially. *Lessee of Livingston* v. *Moore*. 469.

DEPOSITIONS.
Morris v. The Lessee of Harmer's Heirs. 554.

DUTIES.
1. Construction of the acts of congress relative to drawback on refined sugar. *Barlow* v. *The United States*. 404.
2. The legislature did not in the enactments in reference to drawback intend to supersede the common principle of the criminal as well as the civil jurisprudence of the country, that ignorance of the law will not exempt its violation. *Ibid.*
3. Sugars were seized on an allegation that they were of a different

DUTIES.

quality from that stated in the entry. By the court. The statute under which these sugars were seized and condemned, is a highly penal law, and should, in conformity with the rule on the subject, be construed strictly. If either through accident or mistake the sugars were entered by a different denomination from what their quality required, a forfeiture is not incurred. *United States* v. *Eighty-four Boxes of Sugar*. 453.

EJECTMENT.

Lands and land titles.

ERROR.

1. The court refused to quash a writ of error on the ground that the record was not filed with the clerk of the court until the month of June 1832, the writ having been returnable to January term 1832. The defendant in error might have availed himself of the benefit of the twenty-ninth rule of the court, which gave him the right to docket and dismiss the cause. *Pickett's Heirs* v. *Legerwood et al.* 144.
2. The appropriate use of a writ of error, coram vobis, is to enable a court to correct its own errors, those errors which precede the rendition of the judgment. In practice the same end is now generally attained by motion, sustained, if the case require it, by affidavits; and the latter mode has superseded the former in the British practice. *Ibid.*
3. In the circuit court for the district of Kentucky, a judgment in favour of the plaintiff in an ejectment was entered in 1798, and no proceedings on the same until 1830; when the period of the demise having expired, the court, on motion, and notice to one of the defendants, made an order inserting a demise of fifty years. It having been afterwards shown to the court that the parties really interested in the land, when the motion to amend was made, had not been noticed of the proceeding, the court issued a writ of error coram vobis, and gave a judgment sustaining the same, and that the order extending the demise should be set aside. From this judgment a writ of error was prosecuted to this court; and it was held that the judgment on the writ of error coram vobis, was not such a judgment as could be brought up by a writ of error for decision to this court. *Ibid.*

EVIDENCE.

1. Papers translated from a foreign language, respecting the transactions of foreign officers, with whose powers and authorities the court are not well acquainted, containing uncertain and incomplete references to things well understood by the parties, but not understood by the court, should be carefully examined, before it pronounces that an officer holding a high place of trust and confidence, has exceeded his authority. *United States* v. *Percheman*. 51.

EVIDENCE.

2. On general principles of law, a copy of a paper given by a public officer, whose duty it is to keep the originals, ought to be received in evidence. *Ibid.*

3. What will be deemed sufficient evidence of diligent and sufficient search for a lost or mislaid original paper, to permit a copy to be read as secondary evidence. *Minor* v. *Tillotson.* 99.

4. The rules of evidence are adopted for practical purposes in the administration of justice. And although it is laid down in the books as a general rule, that the best evidence the nature of the case will admit of, must be given; yet it is not understood that this rule requires the strongest possible assurance of the matter in question. The extent to which the rule is to be pushed, is governed, in some measure, by circumstances. If any suspicion hangs over the instrument, or that it is designedly withheld, a more rigid inquiry should be made into the reasons for its non-production. But where there is no such suspicion, all that ought to be required is reasonable diligence to obtain the original. *Ibid.*

5. No evidence can be looked into in this court, which exercises an appellate jurisdiction, that was not before the circuit court; and the evidence certified with the record must be considered here as the only evidence before the court below. If, in certifying a record, a part of the evidence in the case had been omitted, it might be certified in obedience to a certiorari; but, in such a case, it must appear from the record that the evidence was used or offered to the circuit court. *Holmes et al.* v. *Trout et al.* 171.

6. Agreements had been made, under which depositions taken in other cases where the same questions of title were involved, should be read in evidence, and on the hearing in the circuit court these depositions were read: afterwards, on an appeal to this court, the decree of the circuit court was reversed, and by the decree of reversal the parties were permitted to proceed de novo. When the case was again heard in the circuit court the defendant objected to the reading of the depositions, asserting that the decree of reversal annulled the written certificate of the parties for the admission of testimony. By the court. The consent to the depositions was not limited to the first hearing, but was co-extensive with the cause. The words in the decree of reversal, that the parties may proceed de novo, are not equivalent to a dismission of the bill without prejudice; nor could the court have understood them as affecting the testimony in the cause; or setting aside the solemn agreement of the parties. The testimony is still admissible to the extent of the agreement. *Vattier* v. *Hinde.* 252.

7 A question as to the admission of evidence of the declaration of a deceased person, as to boundary. *Morris* v. *Harmer's Lessee.* 554.

8. Historical facts of general and public notoriety may be proved by reputation, and that reputation may be established by historical works, of known character and accuracy. But evidence of this sort is confined in a great measure to ancient facts which lo not

EVIDENCE.

pre-suppose better evidence in existence; and where, from the nature of the transaction, or the remoteness of the period, or the public and general reception of the facts, a just foundation is laid for general confidence. *Ibid.*

9. The work of a living author who is within the reach of the process of the court, can hardly be deemed of this nature. He may be called as a witness; he may be examined as to the sources and accuracy of his information; and especially if the facts which he relates are of a recent date, and may be fairly presumed to be within the knowledge of many living persons, from whom he has derived his materials, there would seem to be cogent reasons to say that his book was not, under such circumstances, the best evidence within the reach of the parties. *Ibid.*
10. Special circumstances, which were considered as exempting the evidence contained in a book, called the "Picture of Cincinnati," of the date of the survey of the city and laying out lots in part of the same, from the common rule; which justified its admission. *Ibid.*
11. The plat of the lots in the city of Cincinnati, which had been recorded, and on which the streets and alleys in the same were designated, and which had been generally recognized and used in the surveys of the lots laid down in the same, was properly admitted in evidence. *Ibid.*
12. The depositions of several witnesses, clerks in the counting-house of the plaintiffs, were admitted on the trial of the cause, in which the witnesses stated that they knew that a letter of credit was considered by the plaintiff as covering any balance due by C. H. to them for advances from time to time, to the amount of eight thousand dollars; that advances were made, and moneys paid by them on account of C. H. from the time of receiving the said letter, predicated on the letter always protecting the plaintiffs to the amount of eight thousand dollars; and that it was considered in the counting-house as a continuing letter of credit, and so acted upon by the plaintiffs. Held, that this evidence was rightly admitted to establish that credit had been given to C. H. on the faith of it, from time to time, and that it was treated by the plaintiffs as a continuing guarantee; so that if, in point of law, it was entitled to that character, the plaintiffs' claim might not be open to the suggestion that no such advances, acceptances, or indorsements had been made upon the credit of it. The evidence was not open to the objection, that it was an attempt by parol evidence to explain a written contract. *Douglass et al.* v. *Reynolds et al.* 113.

FLORIDA TREATY.

1. Florida land claims.
2. Even in cases of conquest, it is very unusual for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become

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law, would be violated; that sense of justice and of right, which is acknowledged and felt by the whole civilized world, would be outraged; if private property should be generally confiscated, and private rights annulled on a change in the sovereignty of the country, by the Florida treaty. The people change their allegiance, their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property remain undisturbed. Had Florida changed its sovereign by an act containing no stipulation respecting the property of individuals, the right of property in all those who became subjects or citizens of the new government would have been unaffected by the change. It would have remained the same as under the ancient sovereign. *United States* v. *Percheman.* 51.

3. The language of the second article of the treaty between the United States and Spain, of 22d February 1819, by which Florida was ceded to the United States, conforms to this general principle. *Ibid.*

4. The eighth article of the treaty must be intended to stipulate expressly for the security to private property, which the laws and usages of nations would, without express stipulation, have conferred. No construction which would impair that security, further than its positive words require, would seem to be admissible. Without it, the titles of individuals would remain as valid under the new government as they were under the old. And those titles, so far at least as they were consummated, might be asserted in the courts of the United States, independently of this article. *Ibid.*

5. The treaty was drawn up in the Spanish as well as in the English languages. Both are original, and were unquestionably intended by the parties to be identical. The Spanish has been translated; and it is now understood that the article expressed in that language is, that "the grants shall remain ratified and confirmed to the persons in possession of them, to the same extent," &c. thus conforming exactly to the universally received law of nations. *Ibid.*

6. If the English and Spanish part can, without violence, be made to agree, that construction which establishes this conformity ought to prevail. *Ibid.*

7 No violence is done to the language of the treaty by a construction which conforms the English and Spanish to each other. Although the words "shall be ratified and confirmed," are properly words of contract, stipulating for some future legislation, they are not necessarily so. They may import that "they shall be ratified and confirmed" by force of the instrument itself. When it is observed that in the counterpart of the same treaty, executed at the same time, by the same parties, they are used in this sense, the construction is proper, if not unavoidable. *Ibid.*

8 In the case of Foster v. Elam, 2 Peters, 253, this court considered those words importing a contract The Spanish part of the treaty

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was not then brought into view, and it was then supposed there was no variance between them. It was not supposed that there was even a formal difference of expression in the same instrument, drawn up in the language of each party Had this circumstance been known, it is believed it would have produced the construction which is now given to the article. *Ibid.*

FLORIDA LAND CLAIMS.

1. Juan Percheman claimed two thousand acres of land lying in the territory of Florida, by virtue of a grant from the Spanish governor, made in 1815. His title consisted of a petition presented by himself to the governor of East Florida, praying for a grant of two thousand acres, at a designated place, in pursuance of the royal order of the 29th of March 1815, granting lands to the military who were in St Augustine during the invasion of 1812 and 1813; a decree by the governor, made 12th December 1815, in conformity to the petition, in absolute property, under the authority of the royal order, a certified copy of which decree and of the petition was directed to be issued to him from the secretary's office, in order that it may be to him in all events an equivalent of a title in form; a petition to the governor, dated 31st December 1815, for an order of survey, and a certificate of a survey having been made on the 20th of August 1819 in obedience to the same. This claim was presented, according to law, to the register and receiver of East Florida, while acting as a board of commissioners to ascertain claims and titles to lands in East Florida. The claim was rejected by the board, and the following entry made of the same. "In the memorial of the claimant to this board, he speaks of a survey made by authority in 1829. If this had been produced it would have furnished some support for the certificate of Aguilar. As it is, we reject the claim." Held: that this was not a final action on the claim in the sense those words are used in the act of the 26th of May 1830, entitled "an act supplementary to," &c. *United States* v. *Percheman.* 51.
2. Even in cases of conquest, it is very unusual for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become a law, would be violated; that sense of justice and of right, which is acknowledged and felt by the whole civilized world, would be outraged; if private property should be generally confiscated, and private rights annulled on a change in the sovereignty of the country. The people change their allegiance, their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property remain undisturbed. *Ibid.*
3. Had Florida changed its sovereign by an act containing no stipulation respecting the property of individuals, the right of property in all those who became subjects or citizens of the new government would have been unaffected by the change. It would have

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remained the same as under the ancient sovereign. The language of the second article of the treaty between the United States and Spain, of 22d February 1819, by which Florida was ceded to the United States, conforms to this general principle. *Ibid.*

4. The eighth article of the treaty must be intended to stipulate expressly for the security to private property, which the laws and usages of nations would, without express stipulation, have conferred. No construction which would impair that security, further than its positive words require, would seem to be admissible. Without it, the titles of individuals would remain as valid under the new government as they were under the old. And those titles, so far at least as they were consummated, might be asserted in the courts of the United States, independently of this article. *Ibid.*

5. The treaty was drawn up in the Spanish as well as the English languages. Both are original, and were unquestionably intended by the parties to be identical. The Spanish has been translated; and it is now understood that the article expressed in that language is, that "the grants shall remain ratified and confirmed to the persons in possession of them, to the same extent," &c. thus conforming exactly to the universally received law of nations. *Ibid.*

6. If the English and Spanish part can, without violence, be made to agree in that construction which establishes this conformity ought to prevail. *Ibid.*

7. No violence is done to the language of the treaty by a construction which conforms the English and Spanish to each other. Although the words "shall be ratified and confirmed," are properly words of contract, stipulating for some future legislation, they are not necessarily so. They may import that "they shall be ratified and confirmed" by force of the instrument itself. When it is observed that in the counterpart of the same treaty, executed at the same time, by the same parties, they are used in this sense, the construction is proper, if not unavoidable. *Ibid.*

8. In the case of Foster v. Elam, 2 Peters, 253, this court considered those words importing a contract. The Spanish part of the treaty was not then brought into view, and it was then supposed there was no variance between them. It was not supposed that there was even a formal difference of expression in the same instrument, drawn up in the language of each party. Had this circumstance been known, it is believed it would have produced the construction which is now given to the article. *Ibid.*

9. On the 8th of May 1822 an act was passed "for ascertaining claims and titles to land within the territory of Florida." Congress did not design to submit the validity of titles, which were "valid under the Spanish government, or by the law of nations," to the determination of the commissioners acting under this law. It was necessary to ascertain these claims, and to ascertain their location,

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not to decide finally upon them. The powers to be exercised by the commissioners ought to be limited to the object and purpose of the act. *Ibid.*

10. In all the acts passed upon this subject previous to May 1830, the decisions of the commissioners, or of the register and receiver acting as commissioners, have been confirmed. Whether these acts affirm those decisions by which claims are rejected, as well as those by which they are recommended for confirmation, admits of some doubt. Whether a rejection amounts to more than a refusal to recommend for confirmation, may be a subject of serious inquiry. However this may be, it can admit of no doubt that the decision of the commissioners was conclusive in no case until confirmed by an act of congress. The language of these acts, and among others that of the act of 1828, would indicate that the mind of congress was directed solely to the confirmation of claims, not to their annulment. The decision of this question is not necessary to this case. *Ibid.*
11. The act of 26th May 1830, entitled "an act to provide for the final settlement of land claims in Florida," contains the action of congress on the report of the commissioners of 14th January 1830, in which is the rejection of the claim of the petitioner in this case. The first, second and third sections of this act confirm the claims recommended for confirmation by the commissioners. The fourth section enacts "that all remaining claims, which have been presented according to law, and not finally acted upon, shall be adjudicated and finally settled upon the same conditions," &c. It is apparent that no claim was finally acted upon until it had been acted upon by congress; and it is equally apparent that the action of congress in the report containing this claim, is confined to the confirmation of those titles which were recommended for confirmation. Congress has not passed upon those which were rejected. They were, of consequence, expressly submitted to the court. *Ibid.*
12. From the testimony in the case, it does not appear that the governor of Florida, under whose grant the land is claimed by the petitioner, exceeded his authority in making the grant. *Ibid.*

FOREIGN ATTACHMENT.

Construction of the laws of Pennsylvania relative to foreign attachments. *Brashear* v. *West.* 608.

FORGERY.

1. Indictment in the circuit court of North Carolina for the forgery of, and an attempt to pass, &c. a certain paper writing in imitation of, and purporting to be a bill or note issued by the president, directors and company of the Bank of the United States, founded on the eighteenth section of the act of 1816, establishing the Bank of

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the United States. The note was signed with the name of John Huske, who had not been at any time president of the Bank of the United States, but who, at the time of the date of the counterfeit, was the president of the office of discount at Fayetteville; and was countersigned by the name of John W Sandford, who at no time was cashier of the mother bank, but was at the said date cashier of the said office of discount and deposit. Held, that this was an offence within the provisions of the law. *United States* v. *Turner*. 132.

2. The policy of the act extends to such a case. The object is to guard the public from false and counterfeit paper, purporting on its face to be issued by the bank. It could not be presumed that persons in general could be cognizant of the fact who, at particular periods, were the president and cashier of the bank. They were officers liable to be removed at the pleasure of the directors, and the times of their appointment or removal, or even their names, could not ordinarily be within the knowledge of the body of the citizens. The public mischief would be equally great whether the names were those of the genuine officers, or of fictitious or unauthorized persons, and ordinary diligence would not protect them against imposition. *Ibid.*
3. Indictment on the eighteenth section of the act of congress, passed on the 15th day of April 1816, entitled "an act to incorporate the subscribers to the Bank of the United States." *United States* v. *Brewster*. 164.
4. The indictment charged the defendant with uttering and forging "a counterfeit bill in imitation of a bill issued by the president," &c. of the bank. The forged paper was in these words and figures: "Cashier of the Bank of the United States, Pay to C. W Earnest, or order, five dollars. Office of Discount and Deposit in Pittsburgh, the 10th day of Dec. 1829. A. Brackenridge, Pres. J. Correy, Cash." Indorsed "Pay the bearer, C. W Earnest." Held, that a genuine instrument, of which the forged and counterfeited instrument is an imitation, is not *a bill* issued by order of the president, &c. of the Bank of the United States, according to the true intent and meaning of the eighteenth section of the act incorporating the bank. *Ibid.*

GUARANTEE.

1. Action upon the following letter of guarantee, written by the defendants and delivered to the plaintiffs: "Our friend, Mr Chester Haring, to assist him in business, may require your aid, from time to time, either by acceptance or indorsement of his paper, or advances in cash; in order to save you from harm by so doing, we do hereby bind ourselves, severally and jointly, to be responsible to you, at any time, for a sum not exceeding eight thousand dollars, should the said Chester Haring fail to do so." One count in the

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declaration was for money lent, and money had and received. Held, that upon a collateral undertaking of this sort, no such suit is maintainable. *Douglass* v. *Reynolds*. 113.

2. The depositions of several witnesses, clerks in the counting-house of the plaintiffs, were admitted on the trial of the cause, in which the witnesses stated that they knew that a letter of credit was considered by the plaintiff as covering any balance due by C. H. to them for advances from time to time, to the amount of eight thousand dollars; that advances were made, and moneys paid by them on account of C. H. from the time of receiving the said letter, predicated on the letter always protecting the plaintiffs to the amount of eight thousand dollars; and that it was considered in the counting-house as a continuing letter of credit, and so acted upon by the plaintiffs. Held, that this evidence was rightly admitted to establish that credit had been given to C. H. on the faith of it, from time to time, and that it was treated by the plaintiffs as a continuing guarantee; so that if, in point of law, it was entitled to that character, the plaintiffs' claim might not be open to the suggestion that no such advances, acceptances, or indorsements had been made upon the credit of it. The evidence was not open to the objection, that it was an attempt by parol evidence to explain a written contract. *Ibid.*
3. Nothing can be clearer, upon principle, than that if a letter of credit is given, but in fact no advances are made upon the faith of it; the party is not entitled to recover for any debts due by him from the debtor in whose favour it was given which have been incurred subsequently to the guarantee, and without any reference to it. *Ibid.*
4. The guarantee in this case covered successive advances; acceptances and indorsements made by the plaintiffs, to the amount of eight thousand dollars at any subsequent times, toties quoties, whenever the antecedent transactions were discharged. It was a continuing guarantee. *Ibid.*
5. Every instrument of this sort ought to receive a fair and reasonable interpretation according to the true import of its terms. It being an engagement for the debt of another, there is certainly no reason for giving it an expanded signification or liberal construction, beyond the fair import of its terms. *Ibid.*
6. The cases of Russell v. Clarke's Executors, 7 Cranch's Rep. 69, 2 Peters's Condensed Reports, 417; and Drummond v. Prestman, 12 Wheat. Rep. 515, cited. *Ibid.*
7. A party giving a letter of guarantee has a right to know whether it is accepted, and whether the person to whom it is addressed, means to give credit on the footing of it, or not. It may be most material not only as to his responsibility, but as to future rights and proceedings. It may regulate, in a great measure, his course of conduct, and his exercise of vigilance in regard to the party in

whose favour it is given. Especially it is important in the case of a continuing guarantee; since it may guide his judgment in recalling or suspending it. *Ibid.*

8. If this had been the case of a guarantee limited to a single transaction, it would have been the duty of the plaintiffs to have given notice of the advances, acceptances or indorsements made under it, within a reasonable time after they were made. But this being a continuing guarantee, in which the parties contemplate a series of transactions, and as soon as the defendants had received notice of the acceptance, they must necessarily have understood that there would be successive advances, acceptances, and indorsements which would be renewed and discharged from time to time; there is no general principle upon which to rest, that notice of each successive transaction, as it arose, should be given. All that could be required would be, that when all the transactions under the guarantee were closed, notice of the amount for which the guarantors were responsible, should, within a reasonable time afterwards, be communicated to them. *Ibid.*
9. A demand of payment of the sum advanced under the guarantee, should be made of the person to whom the same was made, and in case of non-payment by him, notice of such demand and non-payment should have been given in a reasonable time to the guarantors, otherwise they would be discharged from the guarantee. By the very terms of this guarantee, as well as by the general principles of law, the guarantors are only collaterally liable upon the failure of the principal debtor to pay the debt. A demand upon him, and a failure on his part to perform his engagements, are indispensable to constitute a casus fœderis. The creditors are not bound to institute legal proceedings against the debtor, but they are bound to use reasonable diligence to make demand and to give notice of non-payment. *Ibid.*
10. An account was stated between the plaintiffs and Chester Haring, showing an apparent balance against Haring of twenty-two thousand five hundred and seventy-three dollars; and at the foot of the account the plaintiffs gave a receipt for several promissory notes, payable at distant periods, dated on the same day with the account. The notes were drawn by C. Haring, and indorsed by Daniel Greenleaf. The receipt stated that "the notes, when discounted, the proceeds to go to the credit of this account." The notes were discounted, and the proceeds received by the plaintiffs, but, being unpaid, they were protested, notice of their non-payment was given to the indorsers, and they were afterwards taken up by the plaintiffs as indorsers thereof. Held: if the plaintiffs below, by their indorsements, were compellable to pay, and did afterwards pay the notes upon their dishonour by the maker, and these notes fell within the scope of the guarantee, they might, without question, recover the amount from the guarantors. *Ibid.*
11. He who receives any note upon which third persons are respon-

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sible, as a conditional payment of a debt due to himself, is bound to use due diligence to collect it of the parties thereto at maturity, otherwise by his laches the debt will be discharged. *Ibid.*

HEADS OF THE PUBLIC DEPARTMENTS OF THE GOVERNMENT.

1 The United States instituted a suit to recover a balance charged on the books of the treasury department against the defendant, who was a clerk in the navy department, upon a fixed annual salary, and acted as agent for the payment of moneys due to the navy pensioners, the privateer pensioners, and for navy disbursements; for the payment of which, funds were placed in his hands by the government. He had received an annual compensation for his services in the payment of the navy pensioners; and for fifteen years, he had received, in preceding accounts, commissions of one per cent on the moneys paid by him for navy disbursements. He claimed these commissions at the treasury, and the claim had been there rejected by the accounting officers; and if allowed the same, he was not now indebted to the government. The United States, on the trial of the case in the circuit court, denied the right of the defendant to these commissions, as they had not been allowed to him by any department of the government, and asserted that the jury had not power to allow them on the trial. *United States* v. *Macdaniel.* 1.

2. The rejection of the claim to commissions by the treasury department formed no objection to the admission of it as evidence of off-set before the jury. Had the claim never been presented to the department, it could not have been admitted as evidence by the court. But, as it had been made out in form and presented to the proper accounting officers, and had been rejected, the circuit court did right in submitting it to the jury; if the claim was considered as equitable. *Ibid.*

3 It would be a novel principle to refuse payment to the subordinates of a department, because their chief, under whose direction they had faithfully served the public, had given an erroneous construction to the law. *Ibid.*

4. The secretary of the navy, in authorizing the defendant to make the disbursements on which the claim for compensation is founded, did not transcend those powers, which, under the circumstances of the case, he might well exercise. *Ibid.*

INDICTMENT.

1. Forgery.
2. Robbing the mail.

INSOLVENT LAWS OF STATES.

Construction of the insolvent laws of Louisiana. *Breedlove et al.* v. *Nicolet et al.* 413.

JURISDICTION.

1. The plaintiffs, aliens, were residents of the state of Louisiana at the time of the execution of the note sued on in the district court of the United States for the eastern district of Louisiana, and continued to reside in New Orleans since, having a commercial house there; they are, however, absent six months in the year; but when absent have their agent to attend to their business. The defendants in the suit were residents of the city of New Orleans, and citizens of the state of Louisiana, when the note was given. The residence of aliens within the state constitutes no objection to the jurisdiction of the federal court. *Breedlove et al.* v. *Nicolet et al.* 413.
2. The plaintiff Sigg was denominated in the petition and writ "J. J. Sigg." The omission of his christian name at full length was alleged as error. By the court. He may have had no christian name. He may have assumed the letters "J. J." as distinguishing him from other persons of the name of Sigg. Objections to the name of the plaintiff cannot be taken advantage of after judgment. If J. J. Sigg was not the person to whom the promise was made—was not the partner of Theodore Nicolet & Co., advantage should have been taken of it sooner. It is too late to allege it as error in this court. *Ibid.*
3. The petitioners aver that they are aliens. This averment is not contradicted on the record, and the court cannot presume that they are citizens. *Ibid.*
4. If originally aliens, they did not cease to be so, or lose their right to sue in the federal court, by a residence in Louisiana. Neither the constitution nor the acts of congress require that aliens should reside abroad to entitle them to sue in the courts of the United States. *Ibid.*
5. The suit not having been brought against Bedford, one of the partnership, it was not necessary to aver that he was subject to the jurisdiction of the courts of the United States. *Ibid.*
6. After issue joined in the district court, the defendants filed a plea that the firm of Theodore Nicolet and Company, the plaintiffs, consisted of other persons in addition to those named in the writ and petition, and that those other persons were citizens of Louisiana. The court, after receiving the plea, directed that it be taken from the files of the court. Held, that this was a proceeding in the discretion of the court; and was not assignable as error in this court. *Ibid.*
7. The commercial partnership, the drawers of the note upon which the suit was instituted, was composed of three persons, one of whom was a resident citizen of Alabama, and out of the jurisdiction of the court when the suit was brought, and the remaining two, the defendants, were resident citizens of Louisiana. Held: that although the suit, being against two of the three obligors, might not be sustained at common law; yet as the courts of Louisiana do not proceed according to the rules of the common law,

JURISDICTION.

their code being founded on the civil law, this suit properly brought. *Ibid.*

8. The note being a commercial contract, is what the law of Louisiana denominates a contract *in solido*, by which each party is bound severally as well as jointly, and may be sued severally as well as jointly. *Ibid.*
9. Juan Madrazzo, a subject of the king of Spain, filed a libel praying *admiralty* process against the state of Georgia, alleging that the state was in possession of a certain sum of money, the proceeds of the sale of certain slaves which had been seized as illegally brought into the state of Georgia; and which seizure had been subsequently, under admiralty proceedings, adjudged to have been illegal, and the right of Madrazzo to the slaves, and the money arising from the sale thereof, established by the decision of the circuit court of the United States for the district of Georgia. The counsel for the petitioner claimed that the supreme court had jurisdiction of the case, alleging that the eleventh amendment of the constitution of the United States, which declares that the judicial power of the United States shall not extend to any suits in *law* or *equity*, did not take away the jurisdiction of the courts of the United States, in suits in *the admiralty* against a state. Held, that this is not a case where property is in custody of a court of admiralty; or brought within its jurisdiction, and in the possession of any private person. It is a mere personal suit against a state to recover proceeds in its possession, and such a suit cannot be commenced in this court against a state. *Ex parte Juan Madrazzo.* 627.
10. Mandamus. In the district court of the northern district of New York, writs of right were prosecuted for lands lying in that district, and neither in the writs, or in the counts, was there an averment of the value of the premises being sufficient in amount to give the court jurisdiction. The tenants appeared, and moved to dismiss the cause for want of jurisdiction; which motion was granted. Subsequently, the demandant moved to reinstate the cases and to amend, by inserting an averment that the premises were of the value of five hundred dollars; which motion was denied by the court. The demandant also moved the court to compel full records of the judgments and orders of dismission, and of the process in the several suits, to be made up and filed, so that the demandant might have the benefit of a writ of error to the supreme court, in order to have its decision upon the grounds and merits of such judgments and orders. The district court refused this motion. On a rule in the supreme court for a mandamus to the district judge, and a return to the same, it was held, that the refusal to allow the amendment to the writ and count, by inserting the averment of the value of the property, was not the subject of examination in this court. The allowance of amendments to pleadings is in the discretion of the judge of the inferior court; and no control over the action of the judge in refusing or admitting them will

JURISDICTION.

be exercised by this court. The court granted a mandamus requiring the district judge to have the records of the cases made up, and to enter judgments thereon, in order to give the demandant the benefit of a writ of error to the supreme court. *Ex parte Bradstreet.* 634.

11. In cases where the demand is not for money, and the nature of the action does not require the value of the thing demanded to be stated in the declaration, the practice of this court and of the courts of the United States has been, to allow the value to be given in evidence. *Ibid.*

12. This court will not exercise any control over the proceedings of an inferior court of the United States, in allowing or refusing to allow amendments in the pleadings, in cases depending in those courts; but every party in such courts has a right to the judgment of this court in a suit brought in those courts, provided the matter in dispute exceeds the value of two thousand dollars. *Ibid.*

KENTUCKY LANDS AND LAND TITLES.

1. Questions on the validity of certain entries of lands in the state of Kentucky. *Holmes et al.* v. *Trout et al.* 171.

2. A survey itself, which had not acquired notoriety, is not a good call for an entry. But when the survey has been made conformable to the entry, and the entry can be sustained, the call for the survey may support an entry. The boundaries of the survey must be shown. This principle is fully settled by the decisions of the courts of the state of Kentucky. *Ibid.*

3. It has been a settled principle in Kentucky that surplus land does not vitiate an entry, and a survey is held valid if made conformably to such an entry. *Ibid.*

4. The principle is well settled, that a junior entry shall limit the survey of a prior entry to its calls. This rule is reasonable and just. *Ibid.*

5. Until an entry be surveyed, a subsequent location must be governed by its calls; and this is the reason why it is essential that every entry shall describe with precision the land designed to be appropriated by it. If the land adjoining the entry should be covered by a subsequent location, it would be most unjust to sanction a survey of the prior entry beyond its calls, and so as to include a part of the junior entry. *Ibid.*

6. The locator may survey his entry in one or more surveys, or he may, at pleasure, withdraw a part of his entry. When a part of a warrant is withdrawn, the rules of the land office require a memorandum on the margin of the record of the original entry, showing what part of it is withdrawn. *Ibid.*

7 In giving a construction to an entry, the intention of the locator is to be chiefly regarded, the same as the intention of the parties in giving a construction to a contract. If a call be impracticable, it is rejected as surplusage, on the ground that it was made through

KENTUCKY LANDS AND LAND TITLES.

mistake; but if a call be made for a natural or artificial object, it shall always control mere course and distance. Where there is no object called for to control a rectangular figure, that form shall be given to the survey. *Ibid.*

LANDS AND LAND TITLES.

1. Florida land claims.
2. Questions on the validity of certain entries of lands in the state of Kentucky. *Holmes et al.* v. *Trout et al.* 171.
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8. In giving a construction to an entry, the intention of the locator is to be chiefly regarded, the same as the intention of the parties in giving a construction to a contract. If a call be impracticable, it is rejected as surplusage, on the ground that it was made through mistake; but if a call be made for a natural or artificial object, it shall always control mere course and distance. Where there is no object called for to control a rectangular figure, that form shall be given to the survey. *Ibid.*
9. Under the laws of Kentucky, the cancelling of a deed does not reinvest the title in the grantor. *Ibid.*
10. In the case of Polk's Lessee v. Wendell, 5 Wheat. 303, it is said by this court, that, on general principles, it is incontestable that a grantee can convey no more than he possesses. Hence, those who come in under a void grant, can acquire nothing. *Sampeyreac et al.* v. *The United States.* 222

LANDS AND LAND TITLES.

11. The legal title to lands in Ohio can only be passed by a proper conveyance by deed, according to the laws of that state. *Morris v. Harmer's Lessee.* 554.

LEX LOCI.

A bond executed by a public officer, for the due performance of his official duties in the disbursement of public money, is to be governed by the laws of the United States as they operate in the district of Columbia, the accounts of the officer being required to be settled at the treasury department. *Duncan's Heirs v. The United States.* 435.

LIEN.

Admiralty.

MANDAMUS.

In the district court of the northern district of New York, writs of right were prosecuted for lands lying in that district, and neither in the writs, or in the counts, was there an averment of the value of the premises being sufficient in amount to give the court jurisdiction. The tenants appeared, and moved to dismiss the cause for want of jurisdiction; which motion was granted. Subsequently, the demandant moved to reinstate the cases and to amend, by inserting an averment that the premises were of the value of five hundred dollars; which motion was denied by the court. The demandant also moved the court to compel full records of the judgments and orders of dismission, and of the process in the several suits, to be made up and filed, so that the demandant might have the benefit of a writ of error to the supreme court, in order to have its decision upon the grounds and merits of such judgments and orders. The district court refused this motion. On a rule in the supreme court for a mandamus to the district judge, and a return to the same, it was held, that the refusal to allow the amendment to the writ and count, by inserting the averment of the value of the property, was not the subject of examination in this court. The allowance of amendments to pleadings is in the discretion of the judge of the inferior court; and no control over the action of the judge in refusing or admitting them will be exercised by this court. The court granted a mandamus requiring the district judge to have the records of the cases made up, and to enter judgments thereon, in order to give the demandant the benefit of a writ of error to the supreme court. *Ex parte Bradstreet.* 634.

MARRIAGE SETTLEMENT.

1. The whole charge of the circuit court was brought up with the record. By the court. This is a practice which this court have

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uniformly discountenanced, and which the court trust a rule made at last term will effectually suppress. *Magruac* v. *Thompson.* 348.

2. This court have nothing to do with comments of the judge of the circuit court upon the evidence. The case of Carver v. Jackson, 4 Peters, 80, 81, cited upon this point. *Ibid.*
3. The question now before the court is, whether the charge to the jury in the circuit court contains any erroneous statement of the law. In examining it for the purpose of ascertaining its correctness, the whole scope and bearing of it must be taken together. It is wholly inadmissible to take up single and detached passages, and to decide upon them without attending to the context, or without incorporating such qualifications and explanations as naturally flow from the language of other parts of the charge. The whole is to be construed as it must have been understood, both by the court and the jury, at the time it was delivered. *Ibid.*
4. Upon principle and authority, to make an antenuptial settlement void as a fraud upon creditors, it is necessary that both parties should concur in, or have cognizance of the intended fraud. If the settler alone intend a fraud, and the other party have no notice of it, but is innocent of it, she is not, and cannot be affected by it. Marriage, in contemplation of the law, is not only a valuable consideration to support such a settlement, but is a consideration of the highest value, and from motives of the soundest policy, is upheld with a strong resolution. The husband and wife, parties to such a contract, are therefore deemed, in the highest sense, purchasers for a valuable consideration; and so that it is bona fide, and without notice of fraud, brought home to both sides, it becomes unimpeachable by creditors. *Ibid.*
5. Fraud may be imputed to the parties, either by direct co-operation in the original design, at the time of its concoction, or by constructive co-operation from notice of it, and carrying the design upon such notice into operation. *Ibid.*
6. Among creditors equally meritorious, a debtor may conscientiously prefer one to another; and it can make no difference that the preferred creditor is his own wife. *Ibid.*
7. Marriage articles or settlements are not required by the laws of New Jersey to be recorded, but only conveyances of real estate: and as to conveyances of real estate, the omission to record them avoids them only as to purchasers and creditors, leaving them in full force between the parties. *Ibid.*

NAVY AGENT

1. The act of the 27th of March 1804, by which the president of the United States was authorized to attach to the navy yard at Washington a captain of the navy for the performance of certain duties, was correctly construed by the head of the navy department until 1829, allowing to the defendant commissions on the sums paid by

NAVY AGENT.

him, as the special agent of the navy department in making the disbursements. *United States* v. *Macdaniel.* 1.

2. By an act passed 10th July 1832, congress authorized the appointment of a separate and permanent navy agent at Washington, and directed the performance of the duties "not only for the navy yard in the city of Washington, but for the navy department, under the direction of the secretary of the navy, in the payment of such accounts and claims as the secretary may direct." These duties would not have been so specially stated in this act, if they had been considered by congress as coming within the ordinary duties of an agent for the navy yard at Washington, under the act of 1804. But independent of this consideration, it is enough to know that the duties in question were discharged by the defendant, under the construction given to the law by the secretary of the navy. *Ibid.*
3. Heads of the public departments of the government.
4. Public accounts.

PARTNERSHIP

There is no doubt that the liability of a deceased co-partner, as well as his interest in the profits of a concern, may, by contract, be extended beyond his death; but without such a stipulation, even in the case of a co-partnership for a term of years, it is clear that death dissolves the concern. *Scholefield* v. *Eichelberger.* 586.

PARDON.

1. The defendant was indicted for robbing the mail of the United States, and putting the life of the driver in jeopardy, and the conviction and judgment pronounced upon it extended to both offences. After this judgment no prosecution could be maintained for the same offence, or for any part of it, provided the former conviction was pleaded. *United States* v *Wilson.* 150.
2. The power of pardon in criminal cases had been exercised from time immemorial by the executive of that nation whose language is our language; and to whose judicial institutions ours bear a close resemblance. We adopt their principles respecting the operation and effect of a pardon; and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it. A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the court. *Ibid.*
3. It is a constituent part of the judicial system, that the judge sees only with judicial eyes, and knows nothing respecting any particular case of which he is not informed judicially. A private deed

PARDON.

not communicated to him, whatever may be its character, whether a pardon or release, is totally unknown, and cannot be acted upon. The looseness which would be introduced into judicial proceedings would prove fatal to the great principles of justice, if the judge might notice and act upon facts not brought regularly into the cause. Such a proceeding, in ordinary cases, would subvert the best established principles, and would overturn those rules which have been settled by the wisdom of ages. *Ibid.*

4. There is nothing peculiar in a pardon which ought to distinguish it in this respect from other facts: no legal principle known to the court will sustain such a distinction. A pardon is a deed, to the validity of which delivery is essential; and delivery is not complete without acceptance. It may then be rejected by the person to whom it is tendered; and if it be rejected, we have discovered no power in a court to force it on him. *Ibid.*

5. It may be supposed that no being condemned to death would reject a pardon, but the rule must be the same in capital cases and in misdemeanours. A pardon may be conditional, and the condition may be more objectionable than the punishment inflicted by the judgment. *Ibid.*

6. The pardon may possibly apply to a different person or a different crime. It may be absolute or conditional. It may be controverted by the prosecutor, and must be expounded by the court. These circumstances combine to show that this, like any other deed, ought to be brought "judicially before the court, by plea, motion or otherwise." *Ibid.*

7 The reason why a court must, ex officio, take notice of a pardon by act of parliament, is, that it is considered as a public law, having the same effect on the case as if the general law punishing the offence had been repealed or annulled. *Ibid.*

PATENTS FOR NEW AND USEFUL INVENTIONS.

1. Action for an alleged violation of a patent for an improvement in guns and fire arms. *Shaw v. Cooper.* 292.

2. The letters patent were obtained in 1822; and in 1829, the patentee having surrendered the same for an alleged defect in the specification, obtained another patent. This second patent is to be considered as having relation to the emanation of the patent of 1822; and not as having been issued on an original application. *Ibid.*

3. The holder of a defective patent may surrender it to the department of state, and obtain a new one, which shall have relation to the emanation of the first. *Ibid.*

4. The case of Grant and others v. Raymond, 6 Peters, 220, cited and affirmed. *Ibid.*

5. A second patent granted on the surrender of a prior one being a continuation of the first, the rights of a patentee must be ascertained by the law under which the original application was made. *Ibid.*

PATENTS FOR NEW AND USEFUL INVENTIONS.

6. By the provisions of the act of congress of 17th April 1800, citizens and aliens, as to patent rights, are placed substantially upon the same ground. In either case, if the invention was known or used by the public before it was patented, the patent is void. In both cases, the right must be tested by the same rule. *Ibid.*

7 What use by the public, before the application is made for a patent, shall make void the right of a patentee. *Ibid.*

8. From an examination of the various provisions of the acts of congress relative to patents for useful inventions, it clearly appears that it was the intention of the legislature, by a compliance with the requisites of the law, to vest the exclusive right in the inventor only; and that, on condition that his invention was neither known nor used by the public, before his application for a patent. If such use or knowledge shall be proved to have existed prior to the application for the patent, the act of 1793 declares the patent void; and the right of an alien is vacated in the same manner, by proving a foreign use or knowledge of his invention. That knowledge or use which would be fatal to the patent right of a citizen, would be equally so to the right of an alien. *Ibid.*

9. The knowledge or use spoken of in the act of congress of 1793, could have referred to the public only; for the provision would be nugatory if it were applied to the inventor himself. He must necessarily have a perfect knowledge of the thing invented, and of its use, before he can describe it, as by law he is required to do preparatory to the emanation of a patent. *Ibid.*

10. There may be cases in which a knowledge of the invention may be surreptitiously obtained and communicated to the public, that do not affect the right of the inventor. Under such circumstances, no presumption can arise in favour of an abandonment of the right to the public by the inventor: though an acquiescence on his part will lay the foundation for such a presumption. It is undoubtedly just that every discoverer should realize the benefits resulting from his discovery, for the period contemplated by law. But those can only be reserved by a substantial compliance with every legal requisite. This exclusive right does not rest alone on his discovery, but also upon the legal sanctions which have been given to it, and the forms of law with which it has been clothed. *Ibid.*

11. No matter by what means an invention may have been communicated to the public before a patent is obtained, any acquiescence in the public use by the inventor will be an abandonment of the right. If the right were asserted by him who fraudulently obtained it, perhaps no lapse of time could give it validity. But the public stand in an entirely different relation to the inventor. His right would be secured by giving public notice that he was the inventor of the thing used, and that he should apply for a patent. *Ibid.*

12. The acquiescence of an inventor in the public use of his invention,

PATENTS FOR NEW AND USEFUL INVENTIONS.

can in no case be presumed where he has no knowledge of such use. But this knowledge may be presumed from the circumstances of the case. This will in general be a fact for a jury; and if the inventor do not, immediately after this notice, assert his right, it is such evidence of acquiescence in the public use, as for ever afterwards to prevent him from asserting it. After his right shall be perfected by a patent, no presumption arises against it from a subsequent use by the public. *Ibid.*

13. A strict construction of the act of congress, as it regards the public use of an invention before it is patented, is not only required by its letter and spirit, but also by sound policy. *Ibid.*
14. The question of abandonment to the public, does not depend on the intention of the inventor. Whatever may be the intention, if he suffers his invention to go into public use, through any means whatsoever, without an immediate assertion of his right, he is not entitled to a patent; nor will a patent obtained under such circumstances protect his right. *Ibid.*

PLEAS AND PLEADING.

Practice.

PRACTICE.

1. A case not being properly prepared in the circuit court for a hearing, the decree was reversed, and the cause remanded, with liberty to the plaintiff to amend his bill. *Estho et al.* v. *Lear.* 130.
2. A decree was pronounced by the district court of the United States for the district of Alexandria, in December 1829, from which the defendants appealed, but did not bring up the record. At January term 1832, the appellees, in pursuance of the rule of court, brought up the record and filed it; and, on motion of their counsel, the appeal was dismissed. On the 9th of March 1832, a citation was signed by the chief justice of the court for the district of Columbia, citing the plaintiffs in the original action to appear before the supreme court, *then in session*, and show cause why the decree of the circuit court should not be corrected. A copy of the record was returned with the citation, "executed" and filed with the clerk. By the court. The record is brought up irregularly, and the cause must be dismissed. *Yeaton et al.* v. *Lenox et al.* 220.
3. The act of March 1803, which gives the appeal from decrees in chancery, subjects it to the rules and regulations which govern writs of error. Under this act it has been always held that an appeal may be prayed in court when the decree is pronounced. But if the appeal be prayed after the court has risen, the party must proceed in the same manner as had been previously directed in writs of error. *Ibid.*
4. The judicial act directs that a writ of error must be allowed by a judge, and that a citation shall be returned with the record; the

adverse party to have at least twenty days notice. This notice, the court understands, is twenty days before the return day of the writ. *Ibid.*

5. Under the provisions of an act of congress passed on the 26th May 1824, proceedings were instituted in the superior court of the territory of Arkansas, by which a confirmation was claimed of a grant of land alleged to have been made to the petitioner, Sampeyreac, by the Spanish government, prior to th cession of Louisiana to the United States by the treaty of April 3d, 1803. This claim was opposed by the district attorney of the United States; and the court, after hearing evidence, decreed that the petitioner recover the land from the United States. Afterwards, the district attorney of the United States, proceeding on the authority of the act of 8th May 1830, filed a bill of review, founded on the allegation that the original decree was obtained by fraud and surprise, that the documents produced in support of the claim of Sampeyreac were forged, and that the witnesses who had been examined to sustain the same were perjured. At a subsequent term Stewart was allowed to become a defendant to the bill of review, and filed an answer, in which the fraud and forgery are denied, and in which he asserts that if the same were committed, he is ignorant thereof, and asserts that he is a bona fide purchaser of the land for a valuable consideration, from one John J. Bowie, who conveyed to him the claim of Sampeyreac by deed, dated about the 22d October 1828. On a final hearing, the court being satisfied of the forgery, perjury and fraud, reversed the original decree. Held, that these proceedings were legal, and were authorized by the act of the 5th of May 1830. *Sampeyreac et al.* v. *The United States.* 222.

6. The act for regulating processes in the courts of the United States, provides that the forms and modes of proceeding in courts of equity, and in those of admiralty and maritime jurisdiction, shall be according to the principles, rules and usages which belong to courts of equity and to courts of admiralty, respectively, as contradistinguished from courts of common law, subject, however, to alterations by the courts, &c. This act has been generally understood to adopt the principles, rules and usages of the court of chancery of England. *Vattier* v. *Hinde.* 252.

7 It is the settled practice in the courts of the United States, if the case can be decided on its merits, between those who are regularly before them, although other persons, not within their jurisdiction, may be collaterally or incidentally concerned, who must have been made parties if they had been amenable to its process, that these circumstances shall not expel other suitors who have a constitutional and legal right to submit their case to a court of the United States; provided the decree may be made without affecting their interests. This rule has also been adopted by the court of chancery in England. *Ibid.*

8. The plea was offered after issue was joined on a plea in bar, and

the argument of the cause had commenced. The court might admit it; and the court might also reject it. It was in the discretion of the court to allow or refuse this additional plea. As it did not go into the merits of the case, the court would undoubtedly have acted right in rejecting it. *Breedlove et al.* v. *Nicolet et al.* 413.

9. All the proceedings in a case are supposed to be within the control of the court while they are in paper, and before a jury is sworn, or judgment given. Orders made may be revised, and such as in the judgment of the court may have been irregular or improperly made, may be set aside. *Ibid.*

10. Action on a bond executed by William Carson, as paymaster, and signed by A. L. Duncan and John Carson as his sureties, conditioned that William Carson, paymaster for the United States, should perform the duties of that office within the district of Orleans. The breach alleged was that W C. had received large sums of money in his official capacity, in his life time, which he had refused to pay into the treasury of the United States. The bond was drawn in the names of Abner L. Duncan, John Carson and Thomas Duncan as sureties for William Carson, but was not executed by Thomas Duncan. There were no witnesses to the bond, but it was acknowledged by all the parties to it before a notary public. The defendants, the heirs and representatives of A. L. Duncan, in answer to a petition to compel the payment of the bond, say that it was stipulated and understood, when the bond was executed, that one Thomas Duncan should sign it, which was never done, and the bond was never completed; and therefore A. L. Duncan was never bound by it: they also say, that, as the representatives of A. L. Duncan, they are not liable for the alleged defalcation of William Carson, because he acted as paymaster out of the limits of the district of Louisiana; and the deficiencies, if any, occurred without the limits of the said district. Before the jury were sworn the defendants offered a statement to the court for the purpose of obtaining a special verdict on the facts, according to the provisions of the act of the legislature of Louisiana of 1818. The court would not suffer the same to be given to the jury for a special finding, because it "was contrary to the practice of the court to compel a jury to find a special verdict." The judge charged the jury that the bond sued upon was not to be governed by the laws of Louisiana in force when the bond was signed at New Orleans, but that this and all similar bonds must be considered as having been executed at the seat of the government of the United States, and to be governed by the principles of the common law; that although the copy of the bond sued on, which was certified from the treasury department, exhibited a scrawl instead of a seal, yet they had a right to presume that the original bond had been executed according to law; and that in the absence of all proof as to the limits of the district of New Orleans, the jury wa

PRACTICE.

bound to presume that the defalcation occurred within the district; and if the paymaster acted beyond the limits of the district, it was incumbent on the defendants to prove the fact: held, that there was no error in these decisions of the district court of Louisiana. *Duncan's Heirs* v. *The United States.* 435.

11. This is an official bond, and was given in pursuance of a law of the United States. By this law, the conditions of the bond were fixed; and also the manner in which its obligations should be enforced. It was delivered to the treasury department at Washington; and to the treasury, did the paymaster and his sureties become bound to pay any moneys in his hands. These powers exercised by the federal government cannot be questioned. It has the power of prescribing under its own laws, what kind of security shall be given by its agents for a faithful discharge of their public duties. And in such cases the local law cannot affect the contract, as it is made with the government; and, in contemplation of law, at the place where its principal powers are exercised. *Ibid.*

12. It is not essential that any court, in establishing or changing its practice, should do so by the adoption of written rules. Its practice may be established by a uniform mode of proceeding for a series of years, and this forms the law of the court. In this case it appears that the Louisiana law, which regulated the practice of the district court of Louisiana, has not only been repealed, but the record shows that in the year 1830, when the decision was given in this case, there was no such practice of the court, as was adopted by the act of congress of 26th May 1824. The court refused the statement of facts to go to the jury for a special finding, because they say "such was contrary to the practice of the court." By the court. On a question of practice, it would seem that the decision of the district court as to what the practice is should be conclusive. The practice of the court cannot be better known and established than by its own solemn adjudications on the subject. *Ibid.*

13. On the 12th of February 1807, an attachment was regularly issued by the court of Williamson county, Tennessee, and was, on the 13th of the same month, levied on a tract of land, the property of the defendant in the suit. Judgment by default was entered on the 15th of October 1807; the property was on motion condemned, and a writ of venditioni exponas issued on the 24th, which came into the hands of the sheriff on the 28th of October, who sold the property under it, on the 2d of January 1808. The county of Williamson was divided on the 16th of November 1807 and that part of the land for which this ejectment was brought, lay in the new county called Maury. Held, that the process of execution for the sale of the land, under which it was sold by the sheriff, was a direction to the sheriff to sell the specific property, which was already in his possession, by virtue of the attachment, and was already condemned by the competent tribunal The subsequent

PRACTICE.

division of the county could not divest his vested interest, or deprive the officer of the power to finish a process which was already begun. *Tyrell's Heirs* v. *Rountree et al.* 464.

14. The instructions given to the jury, not conforming to the issue made up by the pleadings, a venire de novo was awarded. *Scott* v. *Lunt's Administrator* 596.

15. It is not essential that any court, in establishing or changing its practice, should do so by the adoption of written rules. Its practice may be established by a uniform mode of proceeding for a series of years, and this forms the law of the court. In this case it appears that the Louisiana law, which regulated the practice of the district court of Louisiana, has not only been repealed, but the record shows that in the year 1830, when the decision was given in this case, there was no such practice of the court, as was adopted by the act of congress of 26th May 1824. The court refused the statement of facts to go to the jury for a special finding, because they say "such was contrary to the practice of the court." By the court. On a question of practice, it would seem that the decision of the district court as to what the practice is should be conclusive. The practice of the court cannot be better known and established than by its own solemn adjudications on the subject. *Duncan's Heirs* v. *The United States.* 435.

16. In cases where the demand is not for money, and the nature of the action does not require the value of the thing demanded to be stated in the declaration, the practice of this court, and of the courts of the United States has been, to allow the value to be given in evidence. *Ex parte Bradstreet.* 634.

17 This court will not exercise any control over the proceedings of an inferior court of the United States, in allowing or refusing to allow amendments in the pleadings, in cases depending in those courts; but every party in such courts has a right to the judgment of this court in a suit brought in those courts, provided the matter in dispute exceeds the value of two thousand dollars. *Ibid.*

PRINCIPAL AND SURETY.

Guarantee.

PROCESS.

The form of process in the case of The State of Rhode Island v. The State of Massachusetts. *Rhode Island* v. *Massachusetts.* 651.

PROMISSORY NOTE.

1. Whether certain facts in reference to an alleged notice to the indorser, and demand of payment of a promissory note by the drawer, amounted to a waiver of the objection to the want of demand and notice, is a question of fact, and not matter of law, for the consideration of the jury. *Union Bank* v. *Magruder.* 287.

2. Usury.

PUBLIC AGENTS AND OFFICERS.

1. The United States brought an action against General Ripley for a certain amount of public money he had, as was alleged, failed to account for and pay over as the law required. The defendant was in the service of the United States from 1812 to 1817; and was promoted at different periods, until he resigned his commission as major-general by brevet in the latter year. During this period he rendered distinguished and active military services to his country, and received the pay and emoluments to which his rank entitled him, under the law and regulations applicable thereto. Large sums of moneys passed through his hands, and were disbursed by him for the supplies of the troops under his command. He claimed a commission on these sums, and offered evidence to prove that similar allowances had been made to others. He also claimed extra pay or compensation for services performed by him, not within the line of his duty, in preparing plans of fortifications, and for procuring and forwarding supplies of provisions, &c. to troops of the United States, beyond his military command. These claims were resisted by the United States on the ground that no other compensation could be allowed to him than such as was mentioned or defined by the laws of the United States, by instructions of the president, or by the legal regulations of the war department. *United States* v. *Ripley*. 18.
2. It is presumed that every person who has been engaged in the public service has received the compensation allowed by law, until the contrary appear. The amount of compensation in the military service may depend, in some degree, on the regulations of the war department; but such regulations must be uniform, and applicable to all officers under the same circumstances. *Ibid.*
3. If the disbursements, for which compensation is claimed, were not such as were ordinarily attached to the duties of the officer, the fact should be stated; and also that the service was performed under the sanction of the government, or under such circumstances as rendered the extra labour and responsibility assumed in performing it necessary. *Ibid.*
4. Should the accounting officer of the treasury refuse to allow an officer the established compensation which belongs to his station, the claim, having been rejected by the proper department, should, unquestionably, be allowed by way of set-off to the demand of the government by a court and jury. *Ibid.*
5. And it is equally clear, that an equitable allowance should be made in the same manner for extra services performed by an officer which did not come within the line of his official duty, and which had been performed under the sanction of the government, or under circumstances of peculiar emergency. In such a case the compensation should be graduated by the amount paid for like services under similar circumstances. Usage may be safely relied upon in such cases, as fixing a just compensation. *Ibid.*
6. However valuable the plans for fortifications, prepared by a public

officer, may have been, unless they were prepared at the request of the government, or were indispensable to the public service, as a matter of right, a compensation for them cannot be claimed *Ibid.*

7 The claims of compensation set up by a public officer, must be brought within the established rules on the subject, before they can receive judicial sanction. *Ibid.*

8 The United States instituted an action to recover a balance, certified at the treasury, against the defendant on the settlement of his accounts as secretary to the commissioners of the navy hospital fund. Upon this settlement, the defendant set up a claim for compensation, for what he considered extra services, in bringing up and arranging the records of the board, antecedent to his appointment as secretary; and also for commissions on the disbursement of moneys under the orders of the board. These claims were rejected by the accounting officers of the treasury, and were on the trial set up by way of set-off against the demand on the part of the United States. Held: that the allowance of compensation by a fixed salary to the defendant, as the secretary of the board of the navy hospital commissioners, did not exclude his right to claim extra compensation for the disbursement of moneys belonging to the navy hospital fund. Held: that it was not necessary to entitle the defendant to such compensation, that the board of commissioners should have passed a resolution for the payment of such commissions, and that the claim of commissions should have been sanctioned and settled by the board, in order to enable the defendant to set up a claim against the United States. *United States* v. *Fillebrown.* 28.

9. The authority of the commissioners to appoint a secretary was not denied; and this same authority must necessarily exist, to appoint agents and superintendents for the management of the business connected with the employment of the fund; and which, in the absence of any regulation by law on the subject, must carry with it a right to determine the compensation to be allowed them. *Ibid.*

10. From the testimony in the case, it is very certain that the secretary of the navy considered the agency of the defendant in relation to the fund as entirely distinct from his duty as secretary, and for which he was to have extra compensation. And it is fairly to be collected from his deposition that all this received the direct sanction of all the commissioners. But whether it did or not, it was binding on the board; for the secretary of the navy was the acting commissioner, having the authority of the board for doing what he did, and his acts were the acts of the board, in judgment of law. It was therefore an express contract entered into between the board or its agent, and the defendant; and it was not in the power of the board, composed even of the same men after the service had been performed, to rescind the contract, and withhold from

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the defendant the stipulated compensation. There is no doubt, the board, composed of other members, had the same power over this matter as the former board; but it cannot be admitted that it had any greater power. The rejection therefore of these claims, on the 7th of September 1829, after all the services had been performed by the defendant, can have no influence upon the question. *Ibid.*

11. There is no general principle of law known to the court, and no authority has been shown establishing the doctrine that all the proceedings of such boards must be in writing, or that they shall be deemed void; unless the statute under which they act shall require their proceedings to be reduced to writing. It is certainly fit and proper that every important transaction of the board should be committed to writing; but the law imposes no such indispensable duty. The act of 1811, 4 Laws U. S. 311, constituting the fund for navy hospitals, only makes the secretaries of the navy, treasury and war departments, a board of commissioners, by the name and style of commissioners of navy hospitals, and gives some general directions in what way the fund is to be employed: but the mode and manner of transacting their business is not in any way prescribed. *Ibid.*

12. It is not true even with respect to corporations, that all their acts must be established by positive record evidence. In the case of the Bank of the United States v. Dandridge, 12 Wheat. 69, this court say, "we do not admit, as a general proposition, that the acts of a corporation are invalid merely from an omission to have them reduced to writing, unless the statute creating it, makes such writing indispensable as evidence, or to give them an obligatory force. If the statute imposes such restriction, it must be obeyed. If the board had authority to employ the defendant to perform the services which he has rendered, and these services have been actually rendered at the request of the board, the law implies a promise to pay for the same. This principle is fully established in the case of the United States v. Wilkins, 6 Wheat. 143: which brought under the consideration of the court, the act of the 3d of March 1797, 2 Laws U. S. 594, providing for the settlement of accounts between the United States and public receivers. *Ibid.*

13. The instructions given to the jury by the circuit court were: if the jury believe from the evidence, that the regular duties to be performed by the defendant, as secretary to the commissioners of the navy hospital fund, at the stated salary of two hundred and fifty dollars per annum, did not extend to the receipt and disbursement of the fund: that the duty of receiving and disbursing the fund was required of and performed by him, as an extra service, over and above the regular duties of his said appointment: that it has been for many years the general practice of the government and its several departments to allow to persons, though holding offices or clerkships, for the proper duties of which they receive stated

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salaries or other fixed compensation, commissions, over and above such salaries or other compensation, upon the receipts and disbursements of public moneys, appropriated by law for particular services, when such receipts and disbursements were not among the ordinary and regular duties appertaining to such offices or clerkships, but superadded labour and responsibility, apart from such ordinary and regular duties: and that the defendant took upon himself the labour and responsibility of such receipts and expenditures of the navy hospital fund, at the request of said commissioners, or with an understanding on both sides, that he should be compensated for the same, as extra service, by the allowance of a commission on the amount of such receipts and expenditures: then it is competent for the jury in this case, to allow such commission to the defendant, on the said receipts and disbursements, as the jury may find to have been agreed upon between the said commissioners and the defendant: or, in the absence of any specific agreement, fixing the rate of commissions at such rate as the jury shall find to be reasonable and conformable to the general usage of the government, and its departments, in the like cases. These instructions were entirely correct, and in conformity to the rules and principles of the law on this subject. *Ibid.*

14. Upon the trial of this cause, the defendant offered to prove, by parol testimony, the general usage of the different departments of the government, in allowing commissions to the officers of government upon disbursements of money under a special authority not connected with their regular official duties. The counsel of the United States objected to the admission of parol evidence to prove such usage, but the court permitted the evidence to be given. By the court: we see no grounds for objection against the usage offered to be proved, and the purpose for which it was so offered, as connected with the very terms upon which the defendant was employed to perform the services. It was not for the purpose of establishing the right, but to show the measure of compensation, and the manner in which it was to be paid. *Ibid.*

PUBLIC ACCOUNTS.

1. Public agents and officers.
2. Set-off.
3. Lex loci.

ROBBING THE MAIL.

1. The defendant was indicted upon the twenty-fourth section of the act of congress of 3d March 1825, entitled "an act to reduce into one the several acts establishing and regulating the post office department," for advising, procuring and assisting one Joseph I. Straughan, a mail carrier, to rob the mail; and was found guilty. Upon this finding, the judges of the circuit court of North Carolina

ROBBING THE MAIL.

were divided in opinion on the question, whether an indictment founded on the statute for advising, &c. a mail carrier to rob the mail, ought to set forth or aver that the said carrier did in fact commit the offence of robbing the mail? By the court. The answer to this, as an abstract proposition, must be in the affirmative. But if the question intended to be put is, whether there must be a distinct substantive averment of that fact: it is not necessary. The indictment in this case sufficiently sets out that the offence had been committed by the mail carrier. *United States* v. *Mills.* 138.

2. The offence charged in this indictment is a misdemeanour where all are principals; and the doctrine applicable to the principal and accessary in cases of felony, does not apply. The offence, however, charged against the defendant is secondary in its character; and there can be no doubt that it must sufficiently appear upon the indictment, that the offence alleged against the chief actor had been committed. *Ibid.*

RULES OF COURT.

1. Rule as to printed arguments. iv.
2. Rule as to the use of the library of the court. iv.

SET-OFF

1. The United States instituted a suit to recover a balance charged on the books of the treasury department against the defendant, who was a clerk in the navy department, upon a fixed annual salary, and acted as agent for the payment of moneys due to the navy pensioners, the privateer pensioners, and for navy disbursements; for the payment of which, funds were placed in his hands by the government. He had received an annual compensation for his services in the payment of the navy pensioners; and for fifteen years, he had received, in preceding accounts, commissions of one per cent on the moneys paid by him for navy disbursements. He claimed these commissions at the treasury, and the claim had been there rejected by the accounting officers; and if allowed the same, he was not now indebted to the government. The United States, on the trial of the case in the circuit court, denied the right of the defendant to these commissions, as they had not been allowed to him by any department of the government, and asserted that the jury had not power to allow them on the trial. Held, that the rejection of the claim to commissions by the treasury department formed no objection to the admission of it as evidence of offset before the jury. Had the claim never been presented to the department, it could not have been admitted as evidence by the court. But, as it had been made out in form and presented to the proper accounting officers, and had been rejected, the circuit court did right in submitting it to the jury; if the claim was considered as equitable. *United States* v. *Macdaniel.* 1.

SET-OFF

2. This court will not sanction a limitation of the power of the circuit court, in cases of this kind, to the admission of evidence to the jury on a trial, only to such items of offset against the claims of the government as were strictly legal, and which the accounting officer of the treasury should have allowed. It is admitted that a claim which requires legislative sanction, is not a proper offset either before the treasury officers or the court. But there may be cases in which the services having been rendered, a compensation may be made within the discretion of the head of the department; and in such cases the court and jury will do, not what an auditor was authorized to do, but what the head of the department should have done, in sanctioning an equitable allowance. *Ibid.*

3. An action of assumpsit was brought by the government to recover from the defendant the exact sum which in equity it was admitted he was entitled to receive for valuable services rendered to the public in a subordinate capacity, under the express sanction of the head of the navy department. This sum of money happened to be in the hands of the defendant; and the question was, whether he shall, under the circumstances, be required to surrender it to the government, and then petition congress on the subject. A simple statement of the case would seem to render proper a very different course. *Ibid.*

TRADING WITH THE ENEMY.

1. Action of assumpsit to recover the balance of an account current for merchandize purchased in England by order of the defendants. The defence was, that the contract was made during the war, and therefore void. By the court. The doctrine is not to be questioned at this day, that during a state of hostility, the citizens of the hostile states are incapable of contracting with each other. *Scholefield* v. *Eichelberger.* 586.

2. To say that this rule is without exception, would be assuming too great latitude. The question has never yet been examined whether a contract for necessaries, or even for money to enable the individual to get home, could not be enforced; and analogies familiar to the law, as well as the influence of the general rule, in international law, that the severities of war are to be diminished by all safe and practical means, might be appealed to in support of such an exception. But at present, it may be safely affirmed that there is no recognized exception, but permission of a state to its own citizens, which is also implied in any treaty stipulation to that effect, entered into with a belligerent. *Ibid*

TREATY

Florida land claims

USAGE.

1. Usage cannot alter the law, but it is evidence of the construction given to it, and must be considered binding on past transactions. *United States* v. *Macdaniel.* 1.
2. Upon the trial of this cause, the defendant offered to prove, by parol testimony, the general usage of the different departments of the government, in allowing commissions to the officers of government upon disbursements of money under a special authority not connected with their regular official duties. The counsel of the United States objected to the admission of parol evidence to prove such usage, but the court permitted the evidence to be given. By the court. We see no grounds for objection against the usage offered to be proved, and the purpose for which it was so offered, as connected with the very terms upon which the defendant was employed to perform the services. It was not for the purpose of establishing the right, but to show the measure of compensation, and the manner in which it was to be paid. *United States* v. *Fillebrown.* 28.

USURY.

1. A promissory note, payable at a future day, given for a bona fide business transaction, and which note was not made for the purpose of raising money in the market, was sold by the drawee and indorser for a sum so much less on its face, as exhibited a discount beyond the legal rate of interest, no stipulation having been made against the liability of the indorser; is not per se an usurious contract between the indorser and indorsee, and an action can be maintained upon the note against the indorser who sold the same, by the purchaser. *Nichols* v. *Fearson.* 103.
2. The courts of New York have adjudicated, that whenever the note or bill in its inception was a real transaction, so that the payee or promissee might at maturity maintain a suit upon it, a transfer by indorsement, though beyond the legal rate of interest, shall be regarded as a sale of the note or bill, and a valid and legal transaction. But not so where the paper, in its origin, was only a nominal negotiation. *Ibid.*
3. There are two cardinal rules in the doctrine of usury which we think must be regarded as the common place to which all reasoning and adjudication upon the subject should be referred: the first is, that, to constitute usury, there must be a loan in contemplation by the parties; and the second, that a contract which in its inception is unaffected by usury, can never be invalidated by any subsequent usurious transaction. *Ibid.*

VIRGINIA

The common law of England, and all the statutes of parliament made in aid of the common law, prior to the fourth year of the reign of king James the first, which are of a general nature, and not local

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to the kingdom, were expressly adopted by the Virginia statute of 1776; and the subsequent revisions of its code have confirmed the general doctrine on this particular subject. *Scott* v. *Lunt's Administrator.* 596

WRIT OF ERROR.
Error.

THE END